

SENATE BILL No. 519

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-33-4-19; IC 6-6-1.1-103; IC 14-15; IC 14-25-10-4; IC 14-26-2.

Synopsis: Lake and boating issues. Extends the definition of "taxable marine facility" for purposes of motor fuel taxes to facilities located on any body of water under the state's jurisdiction. Requires a child less than 13 years of age to wear a personal flotation device while on a boat. Requires a boat or personal watercraft that is towing a person to have enough space for the operator, observer, and person being towed. Requires that a person who performs certain activities concerning water levels, shorelines, and lake beds along a lake or within ten feet of a lake obtain a permit from the department of natural resources. Directs the natural resources commission to adopt rules. Makes conforming changes. Repeals the former laws concerning permits to change water levels, shorelines, and lake beds. (The introduced version of this bill was prepared by the natural resources study committee.)

Effective: July 1, 2005.

Weatherwax, Lewis

January 18, 2005, read first time and referred to Committee on Natural Resources.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 519

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-33-4-19 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. The commission
3 shall revoke the license of a licensee who operates a riverboat upon
4 Patoka Lake if that licensee violates any of the following:

- 5 ~~(1) IC 14-26-2-6.~~
6 ~~(2) (1) IC 14-26-2-7.~~
7 **(2) IC 14-26-2-23.**
8 (3) IC 14-28-1.

9 SECTION 2. IC 6-6-1.1-103 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 103. As used in this
11 chapter:

- 12 (a) "Administrator" means the administrative head of the
13 department of state revenue or the administrator's designee.
14 (b) "Dealer" means a person, except a distributor, engaged in the
15 business of selling gasoline in Indiana.
16 (c) "Department" means the department of state revenue.
17 (d) "Distributor" means a person who first receives gasoline in



1 Indiana. However, "distributor" does not include the United States
2 or any of its agencies unless their inclusion is permitted under the
3 Constitution and laws of the United States.

4 (e) "Licensed distributor" means a person holding a valid
5 distributor's license issued by the administrator.

6 (f) "Marine facility" means a marina or boat livery.

7 (g) "Gasoline" means:

8 (1) all products commonly or commercially known or sold as
9 gasoline, including casinghead and absorption or natural
10 gasoline, regardless of their classifications or uses; and

11 (2) any liquid, which when subjected to distillation of
12 gasoline, naphtha, kerosene, and similar petroleum products
13 with American Society for Testing Materials Designation
14 D-86, shows not less than ten percent (10%) distilled
15 (recovered) below three hundred forty-seven degrees
16 Fahrenheit (347 degrees F) or one hundred seventy-five
17 degrees Centigrade (175 degrees C), and not less than
18 ninety-five percent (95%) distilled (recovered) below four
19 hundred sixty-four degrees Fahrenheit (464 degrees F) or two
20 hundred forty degrees Centigrade (240 degrees C).

21 However, the term "gasoline" does not include liquefied gases
22 which would not exist as liquids at a temperature of sixty degrees
23 Fahrenheit (60 degrees F) or sixteen degrees Centigrade (16
24 degrees C), and a pressure of fourteen and seven-tenths (14.7)
25 pounds per square inch absolute, or denatured, wood, or ethyl
26 alcohol, ether, turpentine, or acetates, unless such product is used
27 as an additive in the manufacture, compounding, or blending of
28 a liquid within subdivision (2), in which event only the quantity
29 so used is considered gasoline. In addition, "gasoline" does not
30 include those liquids which meet the specifications of subdivision
31 (2) but which are especially designated for use other than as a fuel
32 for internal combustion engines.

33 (h) "Motor vehicle" means a vehicle, except a vehicle operated on
34 rails, which is propelled by an internal combustion engine or
35 motor and is designed to permit its mobile use on public
36 highways.

37 (i) "Person" means a natural person, partnership, firm,
38 association, corporation, limited liability company, representative
39 appointed by a court, or the state or its political subdivisions.

40 (j) "Public highway" means the entire width between boundary
41 lines of every publicly maintained way in Indiana including
42 streets and alleys in cities and towns when any part of the way is

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open to public use for vehicle travel.

(k) "Taxable marine facility" means a marine facility located on ~~an Indiana lake;~~ **a body of water subject to the jurisdiction of the state.**

(l) "Taxicab" means a motor vehicle which is:

(1) designed to carry not more than seven (7) individuals, including the driver;

(2) held out to the public for hire at a fare regulated by municipal ordinance and based upon length of trips or time consumed;

(3) not operated over a definite route; and

(4) a part of a commercial enterprise in the business of providing taxicab service.

(m) "Terminal" means a marine or pipeline gasoline facility.

(n) "Metered pump" means a stationary pump having a meter that is capable of measuring the amount of gasoline dispensed through it.

(o) "Billed gallons" means the gallons indicated on an invoice for payment to a supplier.

(p) "Export" for gasoline and fuels taxed in the same manner as gasoline under the origin state's statutes means the sale for export and delivery out of a state by or for the seller that is:

(1) an export by the seller in the origin state; and

(2) an import by the seller in the destination state.

(q) "Import" for gasoline and fuels taxed in the same manner as gasoline under the origin state's statutes means the purchase for export and transportation out of a state by or for the purchaser that is:

(1) an export by the purchaser in the origin state; and

(2) an import by the purchaser in the destination state.

(r) "Rack" means a dock, platform, or open bay:

(1) located at a refinery or terminal; and

(2) having a system of metered pipes and hoses to load fuel into a tank wagon or tank transport.

SECTION 3. IC 14-15-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) This section does not apply to the following:

(1) A sailboard or windsurfing board.

(2) A manually propelled boat, such as a racing shell, rowing scull, or racing kayak:

(A) that is recognized by national or international racing associations for use in competitive racing;

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(B) in which all occupants row, scull, or paddle, with the exception of a coxswain if a coxswain is provided; and

(C) that is designed to carry and carries equipment only for competitive racing.

(b) All boats must be equipped with the number and type of personal flotation devices listed in this subsection. A person may not operate a boat unless the boat contains:

(1) for each person on board, one (1) personal flotation device that meets the requirements for designation by the United States Coast Guard as a Type I, Type II, Type III, or Type V personal flotation device; and

(2) for a boat, except a canoe or kayak, at least sixteen (16) feet in length and in addition to the requirements of subdivision (1), one (1) personal flotation device that meets the requirements for designation by the United States Coast Guard as a Type IV personal flotation device.

(c) Each child who is less than thirteen (13) years of age and who is on board a boat must wear an appropriate personal flotation device approved by the United States Coast Guard, except when:

(1) the child is below deck;

(2) the child is in an enclosed cabin; or

(3) the boat is docked or anchored.

~~(c)~~ **(d)** The director may waive the requirements of this section for a boat during competition in a boat race for which a permit has been issued by the department if the following conditions are met:

(1) The sponsor of the boat race has informed the director of the precautions the sponsor will take to minimize the safety hazards that exist due to noncompliance with the requirements of this section.

(2) The sponsor files with the director a document under which the sponsor assumes all liability that may result from the use of a boat under the waiver.

SECTION 4. IC 14-15-3-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. A person operating a motorboat may not tow a water ski, a watersled, an aquaplane, or a similar object, including a person on the waterski, watersled, aquaplane, or similar object, unless:

(1) the motorboat is occupied by at least one (1) other person who is giving the person's entire attention to watching the object or person towed; ~~and~~

(2) the person operating the boat is giving the person's entire

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attention to the operation of the boat; **and**

(3) the boat has adequate seating space available for the operator, the observer, and each person being towed.

SECTION 5. IC 14-15-12-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A personal watercraft shall not be used on public waters to tow individuals engaged in waterskiing, aquaplaning, or similar activities, unless:

(1) the personal watercraft is at least nine (9) feet long;

(2) the personal watercraft is designed to seat at least three (3) individuals; **and**

(3) an individual other than the operator of the personal watercraft is aboard the personal watercraft, acting as an observer; **and**

(4) the personal watercraft has adequate seating space available for the operator, the observer, and each person being towed.

SECTION 6. IC 14-25-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. Fees received by the department under the following statutes shall be deposited in the fund:

~~(+) IC 14-26-2-9.~~

(1) IC 14-26-2-23.

(2) IC 14-26-5-4.

(3) IC 14-28-1-22.

(4) IC 14-29-3-2.

(5) IC 14-29-4-4.

SECTION 7. IC 14-26-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. **(a) Unless a person obtains a permit from the department under this section and conducts the activities according to the terms of the permit, a person may not conduct the following activities:**

(1) Over, along, or lakeward of the shoreline or waterline of a public freshwater lake:

(A) excavate;

(B) place fill; or

(C) place, modify, or repair a temporary or permanent structure.

(2) If the lowest point of a structure or excavation would be below the elevation of the shoreline or waterline:

(A) place a permanent structure; or

(B) conduct an excavation;

within ten (10) feet landward of the shoreline or waterline, as measured perpendicularly from the shoreline or waterline of a public freshwater lake.

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(3) Change the water level, area, or depth of a public freshwater lake or the location of the shoreline or waterline.

(b) An application for a permit for an activity described in subsection (a) must be accompanied by the following:

(1) A nonrefundable fee of one hundred dollars (\$100).

(2) A project plan that provides the department with sufficient information concerning the proposed excavation, fill, temporary structure, or permanent structure.

(3) A written acknowledgment from the landowner that any additional water area created under the project plan is part of the lake and is dedicated to the general public use with the public rights described in section 5 of this chapter.

(c) The department may issue a permit after investigating the merits of the application. In determining the merits of the application, the department may consider any factor, including cumulative effects, of the proposed activity upon the following:

(1) The shoreline, waterline, or bed of the lake.

(2) The fish, wildlife, or botanical resources.

(3) The public rights described in section 5 of this chapter.

(4) The management of watercraft operations under IC 14-15.

(5) The interests of a landowner having property rights abutting the lake or rights to access the lake.

(d) A contractor or agent of the landowner who engages in an activity described in subsection (a)(1), (a)(2), or (a)(3) must comply with the terms of any permit issued under this section.

(e) The commission shall adopt rules in the manner provided in ~~IC 14-10-2-4~~ under IC 4-22-2 to do the following:

(1) Assist in the administration of this chapter.

(2) Provide objective standards for licensing:

(A) the placement of a temporary or permanent structure or material; or

(B) the extraction of material;

over, along, or within a shoreline or waterline: issuing permits under this section, including standards for the configuration of piers, boat stations, platforms, and similar structures. The standards:

(A) may provide for a common use if the standard is needed to accommodate the interests of landowners having property rights abutting the lake or rights to access the lake; and

(B) shall exempt any class of activities from licensing if the commission finds that the class is unlikely to pose more than

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- 1 a minimal potential for harm to the public rights described in
 2 section 5 of this chapter.
- 3 (3) Establish a process under IC 4-21.5 for the mediation of
 4 disputes among ~~riparian owners~~ **persons with competing**
 5 **interests** or between a ~~riparian owner~~ **person** and the department.
 6 ~~concerning the usage of an area over, along, or within a shoreline~~
 7 ~~or waterline for a matter within the jurisdiction of this chapter.~~
 8 ~~The A rule adopted under this subsection~~ must provide that:
- 9 (A) if good faith mediation under the process fails to achieve
 10 a settlement, the department shall make a determination of the
 11 dispute; and
- 12 (B) a person affected by the determination of the department
 13 may seek administrative review by the commission.
- 14 SECTION 8. THE FOLLOWING ARE REPEALED [EFFECTIVE
 15 JULY 1, 2005]: IC 14-26-2-6; IC 14-26-2-9.
- 16 SECTION 9. [EFFECTIVE JULY 1, 2005] (a) **A permit issued**
 17 **under IC 14-26-2-6 or IC 14-26-2-9, before their repeal by this act,**
 18 **is valid and shall be considered a permit issued under**
 19 **IC 14-26-2-23, as amended by this act.**
- 20 (b) The SECTION expires July 1, 2007.

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